

Section 20 Consultation policy and procedure



Reference:	Version 2	Author:	Sue Needham
Scope:	Loddon Homes	Approved by:	Holly Messenger
Legislation:	Landlord & Tenant Act 1985 Commonhold & Leasehold Reform Act 2002	Date of approval:	November 2019
Regulatory/ Governance	The Service Charges (Consultation Requirements) (England) Regulations 2003	Date of next review:	November 2022
Related Policies:	Leasehold management policy Service charge policy Repairs and maintenance policy/Asset strategy Procurement policy		

1.0 Policy statement

- 1.1 This policy applies to Loddon Homes (LH) which provides shared ownership as part of its affordable housing offer. It is anticipated that over time some shared owners will staircase to 100% becoming leasehold owners of their property.
- 1.2 LH has delegated responsibility to Wokingham Borough Council (WBC) Tenancy Services for ensuring that this policy is implemented and delivered.
- 1.3 Under the terms of these shared ownership leases, LH is responsible for the maintenance of the communal and external areas of the schemes. The cost of this maintenance is recharged to leaseholders as part of the service charge.
- 1.4 Where major works are proposed to a block, LH is legally obliged to formally consult with leaseholders of the block using the Section 20 consultation process where the cost for each leaseholder will be more than £250.
- 1.5 LH is also legally obliged to formally consult with leaseholders when it wishes to enter into a long term agreement using the Section 20 consultation process where the cost for each leaseholder will be more than £100 per year.

1.6 The main purpose of the consultation process is to gather any leaseholders' views on LH's proposals. However, it also limits LH's ability to recover its costs if it does not follow the correct procedure.

2.0 Scope

2.1 This policy applies to all shared owners and leaseholders of flats who hold a lease with LH.

3.0 Definitions

A leaseholder¹ is a tenant who has purchased 100% of the leasehold or sub leasehold interest in a property, usually a flat, maisonette or house

A shared owner is a tenant who has purchased a share in a property that is less than 100% and pays rent on the remaining share. The property is a flat, maisonette or house. For the purposes of this policy and procedure, shared owners are included in the term leaseholder(s).

The freeholder for the purposes of this policy is LH as landlord who owns the property and land outright. In certain circumstances LH may hold the head long lease for the property and land and for the purposes of this policy will be the freeholder.

Section 20 notice is a notice to advise leaseholders that LH intends to carry out work or to provide a service that leaseholders will have to pay towards. The notice is served on affected leaseholders and any registered tenants' associations (RTA) for the relevant block as relevant.

Qualifying major works: these are works that are undertaken using a planned programme that need to be undertaken to ensure that the block is well maintained and safe. Examples include cyclical maintenance and decorations works, window replacement, roof repairs, rain water goods renewal, installing communal equipment.

The proposed work will cost each leaseholder of the block over £250 (including VAT).

Qualifying Long term agreement: these are service contracts to the block and include for example, lift serving and maintenance, annual fire risk assessments, fire alarm maintenance, cleaning, grounds maintenance, building insurance.

The proposed contract will cost each leaseholder of the block over £100 per annum (including VAT).

¹ Leasehold can be considered to be like a very long tenancy. The lease (legal agreement/contract) with the freeholder allows the leaseholder (tenant) to own the property for a fixed number of years.

Service charges are an amount payable by a tenant of a dwelling as part of or in addition to the rent

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, insurance or the landlord's costs of management, and
- (b) the whole or part of which may vary according to the relevant costs.²

The service charge usually covers the cost of services which are to be provided on a regular basis.

A Public notice allows contractors from other European Union (EU) contractors to tender for work or long term agreements. This is set out in the EU procurement rules and covers all large contracts offered by public and government organisations.

Whilst the UK remains a member of the EU, the council is required to give notice of any works over a certain monetary threshold in the Official Journal of the EU (OJEU). In these cases leaseholders do not have the right to nominate a contractor.

4.0 Legislation

LH is obliged to comply with Section 20 of the Landlord and Tenant Act 1985, as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002, when proposing major works or entering into a long term agreement when the cost to each leaseholder exceeds £250 and £100 respectively.

5.0 The Procedure

5.1 The schedules

The specific Section 20 Notice procedure depends upon the type of qualifying works that are being proposed. These are detailed under the schedules for qualifying works that are set out in the Service Charge Regulations 2003 and can be summarised as follows:

Schedule	Qualifying works	Public notice?	Summary of notices
Schedule 1	Qualifying long term agreement	Public notice not required	1. Notice of intention 2. Notice of landlord's proposal 3. Notice of award of contract

² Section 18 of the Landlord and Tenant Act 1985

Schedule 2	Qualifying long term agreement	Public notice required	1. Notice of intention 2. Notice of landlord's proposal
Schedule 3	Qualifying works	No public notice required: already under long term agreement	1. Notice of intention
Schedule 4			
Part 1	Qualifying works	Public Notice required	1. Notice of intention 2. Notice of proposed contract
Part 2	Qualifying works	No public notice required	1. Notice of intention 2. Notice of estimates 3. Notice of award of contract

5.2 Nominations of contractors from leaseholders and RTAs

5.2.1 Under consultations that are carried out under Schedule 1 and 4 (part 2), leaseholders are invited to nominate possible contractors within the designated period of consultation.

5.2.2 LH will only consider contractors who meet the conditions in LH's procurement policy, which include but may not be limited to:

- Declaration of any conflict of interest
- Confirmation of VAT status
- Provision of the last 3 years' audited accounts
- Banker's reference
- Employer liability insurance
- Public liability insurance
- Professional indemnity insurance
- Health & Safety policy
- Equality & Diversity policy
- Environmental policy

5.2.3 LH will endeavour to obtain estimates from any nominated contractor once they have proved that they meet LH's procurement conditions.

5.3 Contracts which must be advertised within the EU by public notice

5.3.1 Under consultations carried out under Schedule 2 and 4 (part 1), public notice is needed for any work contracts with a value above certain limits which are set by the EU. See current EU procurement thresholds at <https://www.ojec.com/thresholds.aspx>

5.3.2 Although LH must request and consider the leaseholders' opinions and views, they do not have the right to nominate a contractor for these contracts.

5.4 Notices for qualifying works

5.4.1 In view of the type of works that will be undertaken to blocks, the majority of consultations undertaken by LH will be under Schedule 1 and Schedule 4 (Part 2).

5.4.2 The consultation notices that are required for these qualifying works are in three stages:

- Before the tender is offered (the pre-tender stage), LH must serve a notice of intention.
- During the tender (the tender stage), LH must serve notice of their proposals (estimates).
- In some cases, when they award the contract (award of contract stage), LH must serve notice of the award of contract.

5.4.3 Duration of the full consultation process

5.5.3.1 When developing proposals for qualifying works or long term agreements, it must be taken into account that the whole process will take a minimum of three months to be completed. This is due to the following reasons:

- A minimum of 30 days should be given to leaseholders to give their comments and observations following the serving of the notice of intentions at the pre-tender stage.
- If a contractor(s) is nominated then LH will have to undertake checks to ensure that the contractor meets the necessary conditions (see 5.2.2).
- A minimum of 30 days should be given to leaseholders to give their comments and observations following the serving of the notice of proposals once tenders have been obtained.
- LH has a duty to have regards to any observations made by leaseholders. LH must make a summary of observations and comments that it receives following service of the notice of intention and notice of proposals (estimates) respectively and provide a response to all leaseholders within 21 days of the end of the consultation period of 30 days.

5.5.3.2 The leaseholders have the right to inspect any documents relating to the proposed works, including specifications and tenders. These should be made available at the Civic Offices during office hours.

5.7 Content of notices

5.7.1 The procedure for serving the notices and the contents of the notices is prescribed in the Service Charge Regulations 2006³.

5.7.2 Consultation requirements for qualifying work where public notice is not needed (Schedule 4 Part 2)

5.7.2.1 There are three stages of consultation.

- Stage 1: Pre-tender stage
 - Notice of intention: Section 20 notice with 30 days consultation period.
 - LH must send this notice to each leaseholder and any Residents' and Tenants' Association (RTA).
 - This notice must:
 - describe, in general terms, the work LH is proposing to carry out, or specify a reasonable place and time when leaseholders and the RTA can inspect a description of the work;
 - give LH's reasons for carrying out the proposed work;
 - invite leaseholders and the RTA to make written observations on the proposed work;
 - give the address where leaseholders and the RTA should send their observations;
 - give the date when the consultation period will end (being at least 30 days from the date the leaseholder receives the notice) and explain that LH must receive any observations by this date; and
 - tell leaseholders and the RTA that they have the right to nominate a contractor for the work.
 - Under the duty to have regard to observations, LH must take into account any observations they receive by the due date.
 - LH will then ask for estimates from the contractors it has chosen. LH must also try to ask for estimates from contractors nominated by leaseholders and the RTA. See 5.2 for the criteria which contractors nominated by leaseholders and the RTA need to meet in order to tender for the work.
- Stage 2: Tender-stage consultation
 - Preparing LH's estimates
LH must obtain at least two estimates for carrying out the proposed work. At least one of the estimates must be from a contractor who is not in any way connected to LH.
LH must make all the estimates available for leaseholders and the RTA to inspect upon request.

Notice of the estimates: Section 20 notice with 30 days consultation period.

³ The prescribed information has been obtained from LEASE (Leasehold Advisory Service)

- The landlord must send this notice, to each leaseholders and the RTA (if there is one).
- The notice must include a statement (the 'paragraph b statement') containing the following:
 - i) For at least two of the estimates, the amount shown in the estimate as the estimated cost of the proposed work (this does not have to be a copy of the estimate, simply a statement of the amount), and:
 - ii) At least one of these estimates must be from a contractor who is not in any way connected to LH ; and
 - iii) If LH has received any estimates from a nominated contractor, one of these estimates must be from a nominated contractor.

If leaseholders have made observations following the service of the notice of intention by the due date, the landlord must provide a summary of these and their responses to them in this notice.

- The notice must:
 - specify a reasonable place and time when leaseholders and the RTA can inspect all the estimates (LH must make all of the estimates they have received available for inspection, not just the estimates it has based their landlord's statement on);
 - invite leaseholders and the RTA to make written observations on the estimates;
 - give the address where leaseholders and the RTA should send their observations; and
 - give the date when LH must receive the observations by.
- Under the duty to have regard to observations LH must take into account any observations they receive by the due date.

➤ Stage 3: Award of contract

Notice of the award of contract: This section 20 notice must be sent within 21 days after the consultation period has been completed for the Notice of estimates

Within 21 days, LH must send a notice to each leaseholder and the RTA, which:

- explains LH's reasons for awarding the contract, or says where and when tenants can inspect those reasons; and
- gives a summary of any leaseholders' observations LH has received on the estimates and their responses to these.

Although LH does not have to send this notice if it has awarded the contract to a contractor who was nominated by a leaseholder or the RTA or the lowest tender, it is best practice to do so.

The templates for these three notices are included in the Section 20 toolkit that supports this policy and procedure (Schedule 4 part 2)⁴

5.7.3 Consultation requirements for qualifying long term agreement work where public notice is not needed (Schedule 1)⁵

5.7.3.1 There are three stages of consultation:

Stage 1: Pre-tender stage

Notice of intention: Section 20 notice with a 30 days' consultation period.

- LH must send this notice to each leaseholder who will be asked to contribute towards the costs through their service charges, and the RTA if there is one.
 - This notice must:
 - describe in general terms the work that will be carried out or the services that will be provided, or specify a reasonable place and time when leaseholders and the RTA can inspect a description of the work or services free of charge;
 - state LH's reasons for considering the long-term agreement to be necessary;
 - if the contract includes qualifying work, give LH's reasons for considering it necessary to carry out the work;
 - advise each leaseholder and the RTA that they have at least 30 days from the date of the notice in which to make written observations, and explain where to send these to, and by what date (the due date); and
 - advise leaseholders that they have the right to nominate a contractor that they feel should be invited to tender for the work, and that they have at least 30 days to make their nomination.
 - Under the duty to have regard to observations, LH must take into account any observations they receive by the due date.

Estimates

The landlord will then ask for estimates from the contractors they have chosen. They must also attempt to obtain estimates from contractors nominated by leaseholders and the RTA. The criteria which contractors nominated by leaseholders and the RTA need to meet in order to tender for the work are set out in section 5.2.

Stage 2: Tender stage

Preparing LH's proposals:

⁴ Template letters content obtained from LEASE (Leasehold Advisory Service)

⁵ If proposing to enter into a QLTA for the provision of building insurance then shared owners of houses will need to be included.

- LH must prepare at least two proposals (estimates) for the services, goods, work etc. (“the relevant matters”)
- At least one of the proposals must be from a contractor who is not in any way connected to LH.
- If leaseholders or the RTA has nominated contractors, the proposals must also include:
 - an estimate from a contractor nominated by a leaseholder where received
 - an estimate from a contractor nominated by an RTA where received.

Notice of the landlord’s proposals: Section 20 notice with 30 days’ consultation period.

1. LH must give notice of the proposals to each leaseholder and the RTA.
2. Each proposal must contain the following.
 - A statement of the relevant matters.
 - A statement of the name and address of each contractor involved in the proposed agreement.
 - Details of any connection (apart from the proposed agreement) between the contractors and LH.
 - The leaseholders’ estimated contribution, if it is reasonable for LH to know this. Otherwise, the proposal must include:
 - the cost for the building or the premises, if it is reasonable for LH to know this; or
 - the current unit cost, and hourly or daily rate of the work or service, if it is reasonable for LH to know this.
 - If LH’s proposal is to appoint an agent to be responsible for managing the property, each proposal must contain a statement of whether the proposed agent:
 - is or is not a member of a professional body or trade association and, if so, which one; and
 - does or does not subscribe to any code of practice or voluntary accreditation scheme relevant to managing agents.
 - Details of whether any amount given in the proposed agreement can be altered.
 - How long the proposed agreement is intended to last.
 - A summary of any observations LH has received by the due date, and its response to these.
3. A copy of each proposal or specify a reasonable place and time when leaseholders and the RTA can inspect them.
4. The notice must:
 - invite leaseholders to make written observations on the proposals;
 - give the address which leaseholders must send their observations to;
 - state when the period of at least 30 days for consultation ends; and
 - advise leaseholders that they must receive all observations by that date.

Under the schedule, LH does not have to make all of the estimates it has received available for leaseholders to inspect, only those relating to the proposals made to them. However, it is good practice to make all estimates available for inspection, even those that were not one of the proposals put to leaseholders, and some details of the criteria the landlord used when selecting the proposed contractors.

LH must have regard to any observations it receives by the due date.

Stage 3: Award of contract

Notice of the award of contract: Section 20 notice with a 21 days' response period

Within 21 days of entering into the agreement, LH must send a notice of the award of contract to each leaseholder and the RTA. This notice must:

- state LH's reasons for awarding the contract, or say where and when tenants and the RTA can inspect those reasons; and
- give a summary of the observations LH has received on the proposals and its response to the observations, or say where and when tenants and the RTA can inspect the summary and LH's response.

LH does not have to provide a notice of the award of contract if they award the contract to:

- a contractor nominated by a leaseholder or an RTA; or
- the lowest tender, but it is best practice to do so.

The templates for these three notices are included in the Section 20 toolkit that supports this policy and procedure (Schedule 1)⁶

5.7.4 Consultation requirements for qualifying work where public notice is needed (Schedule 4 Part 1)

There are two stages of consultation where a public notice is required.

Stage 1: Pre-tender consultation

Notice of intention: Section 20 notice with a 30 days' consultation period.

- LH must send this notice to each leaseholder and the RTA and must:
- describe, in general terms, the work the landlord is proposing to carry out, or specify a reasonable place and time when tenants and the RTA can inspect a description of the work;
 - give the landlord's reasons for carrying out the proposed work;

⁶ Template letters content obtained from LEASE (Leasehold Advisory Service)

- explain that the landlord is not inviting tenants to nominate alternative contractors because they have to give public notice;
 - invite tenants leaseholders and the RTA to make written observations on the proposed work;
 - give the address to where tenants and the RTA should send their observations; and
 - give the date when the consultation period will end (being at least 30 days from the date the leaseholder receives the notice) and explain that the landlord must receive any observations by this date.
- Under the duty to have regard to observations, LH must take into account any observations they receive by the due date.

Stage 2: Tender stage consultation

- LH must prepare a statement of the proposed contract under which the proposed work will be carried out.

Notice of the proposed contract: Section 20 notice with 30 days' consultation period.

LH must give notice of the proposed contract to each tenant and the RTA.

The contract statement prepared by the landlord must contain the following.

- A statement of:
 - the name and address of the proposed contractor; and
 - any connection between LH and the proposed contractor (apart from the proposed agreement).
- The tenant's estimated contribution, if it is reasonable for the landlord to know this. Otherwise, the statement must include:
 - the estimated cost for the building or the premises, if it is reasonable for the landlord to know this;
 - the current unit cost, and hourly or daily rate, if it is reasonable for the landlord to know this; or
 - the reasons why the landlord cannot provide the cost information, and the date when they will provide this information. (When this information is available, the landlord must provide it within 21 days of receiving it.)
- A summary of any observations the landlord has received on the notice of intention by the due date, and their responses to these.

- The notice must include the contract statement or specify a reasonable place and time when tenants can inspect it.
- If facilities to copy the contract statement are not available at the place specified, LH must provide a copy free of charge to any tenant who asks for one.
- The notice must explain that leaseholders have at least 30 days in which to send LH their written observations, and give the address for sending these to.

The notice must state the date that LH must receive any observations by.

- Under the duty to have regard to observations, LH must take into account any observations they receive by the due date.

If LH receives any observations by the due date, it must send the written response direct to the relevant leaseholder(s) within 21 days of receiving the observation.

The templates for these two notices are included in the Section 20 toolkit that supports this policy and procedure (Schedule 4 Part 1)⁷

5.7.5 Consultation requirements for a qualifying long term agreement where a public notice is needed. (Schedule 2)

There are 2 stages of consultation and leaseholders/RTA do not have the right to nominate a contractor.

Stage 1: Pre-tender stage

Notice of intention section 20 with a 30 days' consultation period.

- The landlord must send this notice to each leaseholder who will be asked to contribute towards the costs through their service charges and the RTA.

This notice must:

- describe in general terms the work that will be carried out or the services that will be provided, or specify a place and time when leaseholders and the RTA can inspect a description of the work or services free of charge;
- state LH's reasons for considering the long-term agreement to be necessary
- if the contract where the relevant matters consist of or include qualifying work, give the landlord's reasons for considering it necessary to carry out the work;
- explain that LH is giving public notice of the work and so does not have to invite leaseholders and the RTA to nominate contractors for the work;

⁷ Template letters content obtained from LEASE (Leasehold Advisory Service)

- invite leaseholders and the RTA to provide written observations on the long-term agreement;
 - give the address where leaseholders and the RTA should send their observations; and
 - give the date when the consultation period will end (30 days from the date the leaseholder receives the notice) and explain that LH must receive any observations by this date.
- Under the duty to have regard to observations, LH must take into account any observations they receive by the due date.

Stage 2: Tender stage

Preparing LH's proposal. LH must prepare a proposal for the proposed agreement.

Notice of the landlord's proposal – section 20 notice with a 30 days' consultation period.

LH must give notice of the proposal to each leaseholder and the RTA.

LH's proposal must contain the following.

- A statement of: the name and address of every contractor involved in the proposed agreement; and
- any connection between the contractors and LH (apart from the proposed agreement).
- The leaseholder's estimated contribution, if it is reasonable for LH to know this. Otherwise, the proposal must include:
 - the estimated cost for the building or the premises, if it is reasonable for LH to know this;
 - the current unit cost, and hourly or daily rate, if it is reasonable for LH to know this; or
 - the reasons why LH cannot provide the cost information, and the date when they will provide this information. When this information is available, LH must provide it within 21 days of receiving it.
- If LH proposes to appoint an agent to be responsible for any part of the contract, each proposal must contain a statement of whether the proposed agent:
 - is or is not a member of a professional body or trade association and, if so, which one; and
 - does or does not subscribe to any code of practice or voluntary accreditation scheme relevant to managing agents.
- How long the proposed agreement is intended to last.
- A summary of any observations the landlord has received by the due date, and their response to these.

- The notice must include a copy of the proposal or specify a reasonable place and time when leaseholders can inspect it.
 - If facilities to copy the proposal are not available at the place specified, LH must provide a copy free of charge to any tenant who asks for one.
 - The notice must explain that leaseholders have at least 30 days in which to send the landlord their written observations, and give the address for sending these to.
 - The notice must state the date that LH must receive any observations by.
- Under the duty to have regard to observations, LH must take into account any observations they receive by the due date
 - LH's response to observations: If LH receives any observations by the due date, it must send the written response direct to the relevant leaseholder within 21 days of receiving the observation. LH must send individual replies to each leaseholder who sent observations, not a general notice to everyone who received the previous notice.

The templates for these two notices are included in the Section 20 toolkit that supports this policy and procedure (Schedule 2)⁸

5.7.6 Consultation requirements for qualifying work under a qualifying long term agreement (Schedule 3)

Tenants are not invited to nominate a contractor. There is one stage of consultation.

If qualifying work will be carried out under a qualifying long-term agreement, competitive tendering is not necessary because the agreement for the contractor to carry out the work is already in place.

Stage 1 Pre-tender consultation stage

Notice of intention section 20 notice with 30 days' consultation period.

LH must send this notice to each leaseholder and the RTA.

This notice must:

- describe, in general terms, the work that will be carried out, or specify a reasonable place and time when leaseholders and the RTA can inspect a description of the work;
- state LH's reasons for considering it necessary to carry out the proposed work;

⁸ Template letters content obtained from LEASE (Leasehold Advisory Service)

- contain a statement of the estimated total cost to LH of the proposed work;
 - invite leaseholders and the RTA to provide written observations on the proposed work or the estimated cost;
 - give the address where leaseholders and the RTA should send their observations;
 - give the date when the consultation period will end (being at least 30 days from the date the leaseholder receives the notice) and explain that LH must receive any observations by this date.
- Under the duty to have regard to observations, LH must take into account any observations they receive by the due date.

➤ Landlord's response to observations:

If the landlord receives any observations by the due date, they must send their written response direct to the relevant tenant within 21 days of receiving the observation. LH must send individual replies, not a general notice to everyone who received the previous notice.

The template for this notice is included in the Section 20 toolkit that supports this policy and procedure (Schedule 3)

5.8 Dispensation

In certain circumstances, LH will not be in a position to undertake the full consultation prior to major works being undertaken. The most common cause of this is for emergency work to be undertaken.

In these situations, LH can apply to the First Tier Tribunal for dispensation of all or any of the consultation requirements provided by Section 20 under Section 20ZA of the Landlord and Tenancy Act 1985.

The application form is included in the Section 20 toolkit.

5.9 Where the lease is assigned

If an assignment takes place through any of the new consultation procedures, LH does not have to start again or send any missed notices.

The new leasehold only has to be included in the next stage of the consultation process that applies 31 days after the new lease started.

Although this is not specified in the 2003 service charges regulations, in cases where the ownership of a flat is assigned during the consultation procedure, it is reasonable for LH to assume that the new leaseholder has received copies of the consultation documents from the seller of the flat when the lease was transferred.

6.0. Equality & Diversity

9.1 LH recognise the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. LH work closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. LH will record, analyse and monitor information on ethnicity, vulnerability and disability.

7.0. Confidentiality

7.1 Under the Data Protection Act 2018, and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
- sensitive organisational information.

7.2 LH employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

8.0 Review

9.1 This policy will be reviewed on a three yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant LHC policies.

9.0 Performance

9.1 Our performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to our associated boards.

10.0 Appendices

None